

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**CELESTE WILLIAMS, LAUREN CRUZ,  
EMANUEL O'NEALE, BRANDON  
STURMAN, LATRESHA HALL,  
LAKEISHA MITCHELL, CHRISTINE  
BORBELY, JULIE GARIBALDI and  
JANINE APONTE, on behalf of themselves  
and others similarly situated,**

INDEX NO: 07cv3978-LAP

**Plaintiffs,**

**v.**

**TWENTY ONES INCORPORATED d/b/a  
THE 40/40 CLUB, SHAWN CARTER p/k/a  
JAY-Z, JUAN PEREZ and DESIREE  
GONZALES,**

**Defendants.**

-----X  
**DECLARATION OF BRANDON STURMAN**

I, Brandon Sturman, under penalty of perjury, affirm as follows:

1. I am a New York resident and a named plaintiff in the above-captioned matter.
2. I submit this declaration based on personal knowledge unless indicated otherwise.
3. I was employed as a Bartender at The 40/40 Club sports bar located at 6 West 25<sup>th</sup>

Street from approximately April 2006 through February 2007.

4. Throughout my employment at The 40/40 Club, I was not paid the minimum wage for each hour that I worked. Instead, I only received tips. Based on conversations with other employees of The 40/40 Club, such as Candice, Kim, Mohammed, Eddie, Chrissy, Shondell, Jennifer, and Christina (last names unknown), and what I witnessed, I know that it was the common practice of defendants to not pay its employees who received tips a minimum wage and/or hourly wage for any hours of work.

5. I never received a paycheck from The 40/40 Club during my employment. Therefore, I did not receive anything which reflected my hours of work, the wages I was supposed to receive, or any withholdings for taxes. Based on conversations with other employees of The 40/40 Club, such as Candice, Kim, Mohammed, Eddie, Chrissy, Shondell, Jennifer, and Christina (last names unknown), and what I witnessed, I know this was the common practice of defendants.

6. During my employment, I regularly worked more than forty hours in a week. However, I was not paid time and a half for hours worked in excess of forty in a week. The 40/40 Club's failure to pay overtime is reflected in the time report attached as Exhibit A. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know it was the common practice of defendants to not pay its employees an overtime premium.

7. The time report attached as Exhibit A also shows that I worked in excess of ten (10) hours per workday for defendants but I was never paid a "spread of hours" premium. I have personally witnessed other employees working shifts of more than ten (10) hours. Based on conversations with these employees, I know it was the common practice of defendants to not pay a "spread of hours" premium for workdays in excess of ten (10) hours.

8. I did not receive any payroll reports or pay checks during my employment at The 40/40 Club.

9. Attached as Exhibit B are my alleged W-2s provided by defendants and shown to me by my attorneys. Throughout my employment at The 40/40 Club, I never received a W-2 and have never seen these documents prior to this lawsuit. Furthermore, I have no reason to believe that these alleged W-2s are an accurate reflection of what I was actually paid in wages.

10. I believe that portions of my tips were retained by defendants. The 40/40 Club did not provide us with, or require us to fill out, any sort of tip declaration form. Because The

40/40 Club did not provide us with any records establishing the amount of tips I should have received, I have no independent means of verifying these amounts. However, based on the tips given to me by patrons and what was eventually paid to me by defendants, I believe that I did not receive all of my tips due.

11. If a patron of The 40/40 Club did not sign their credit card receipt, defendants retained the disputed tip for ninety (90) days. Defendants gave me a copy of this policy, which is attached as Exhibit C. This happened to me personally as well as to other employees that I know. Therefore, based on my personal experience and the experiences of other employees at The 40/40 Club, I know this was the common practice of defendants.

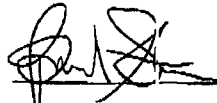
12. I was not paid any direct wage by The 40/40 Club. Because The 40/40 Club never paid me any direct wages, I was not paid the wages I was owed in a timely manner. Other employees, including Candice, Kim, Mohammed, Eddie, Chrissy, Shondell, Jennifer, and Christina (last names unknown), have reported to me that they were not paid any direct wages by The 40/40 Club. Therefore, I know that it was the common practice of defendants to not pay its employees in a timely manner.

13. If a patron left The 40/40 Club without paying the bill, defendants would force its employees to pay the bill with his/her own money. For example, I had a customer walk out without paying and I had to pay the bill. Other employees of The 40/40 Club, including Candice, Kim, Mohammed, Eddie, Chrissy, Shondell, Jennifer, and Christina (last names unknown), have told me about similar experiences.

14. Similarly, The 40/40 Club forced employees to pay for breakages, spills, and the like.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 3 day of JANUARY, 2008.

  
\_\_\_\_\_  
Brandon Sturman

# EXHIBIT A

40/40 NYC

REPORT DATE: 06/14/2007

PAGE: 1

REPORT TIME: 21:03:25.84

Payroll Report for the period from Tue May 16, 2006 to Sun May 21, 2006

REG regular OTW ovt-week OTD ovt-day MSC misc pay SAL salary ADJ adjustment DEL deleted punch \* Rate changed in punch  
 Types of punches not included in regular or overtime calculation: PADJ prev.period adjustment HOL holidays SHDF shift diff.pay

STURMAN, BRANDON 0758 Department Job Tips Pool Type Hours Rate Total  
 End Date: 07/29/06 FRONT OF HOUSE BARTENDER REG 32.0000 4.350 139.20  
 OTD 17.6000 0.000 0.00  
 Total: 32.0000 regular hours ( 139.20) and 17.6000 overtime hours( 0.00) and 0.0000 other hoursTotal Amt 139.20

Department	Job	Day	Date	Rate	Type	In	Out	Hrs
FRONT OF HOUSE	BARTENDER	Tue.	5/16	4.350*		8:46p	6:45a	9.98
		Wed.	5/17	4.350*		2:22p	6:45a	16.38
		Thu.	5/18	4.350		6:45a	6:45a	0.00
		Fri.	5/19	4.350		6:45a	6:45a	0.00
		Sat.	5/20	4.350*		6:56p	6:45a	11.82
		Sun.	5/21	4.350*		7:20p	6:45a	11.42

\*\*\*Total wages for selected employees: 139.20

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# EXHIBIT B

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Jun-01-2007 10:35 PM PAYCHEX, INC. 1

Form W-2 Wage and Tax Statement 2006		OMB No. 1545-0008	39-1908647	Department of the Treasury -- Internal Revenue Service	
Control number <b>0020-Y156</b>	Copy B--To Be Filed With Employee's <b>FEDERAL Tax Return.</b>	Employer identification no. (EIN) <b>55-0787351</b>	1 Wages, tips, other comp. <b>2886.19</b>	2 Fed. income tax withheld <b>278.79</b>	
Employee's name, address, and ZIP code <b>TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010</b>		Employee's social security no. [REDACTED]	3 Social security wages <b>2886.19</b>	4 Social security tax withheld <b>178.94</b>	
		7 Social security tips <b>2886.19</b>	5 Medicare wages and tips <b>2886.19</b>	6 Medicare tax withheld <b>41.85</b>	
		8 Allocated tips	9 Advance EIC payment	10 Dependent care benefits	
Employee's name, address, and ZIP code <b>BRANDON STURMAN</b> [REDACTED]		11 Nonqualified plans 14 NYSDI <b>1.20</b>	12a-12d Code See inst. for box 12	13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>	
15 State Employer's state ID number NY <b>55-0787351</b>	16 State wages, tips, etc. <b>2886.19</b>	17 State income tax <b>152.20</b>	18 Local wages, tips, etc. <b>2886.19</b>	19 Local income tax <b>89.33</b>	20 Locality name <b>NYC</b>

This information is being furnished to the Internal Revenue Service.

Form W-2 Wage and Tax Statement 2006		OMB No. 1545-0008	39-1908647	Department of the Treasury -- Internal Revenue Service	
Control number <b>0020-Y156</b>	Copy C--For EMPLOYEE'S RECORDS (see Notice to Employee.) This info. is being furnished to the IRS.	Employer identification no. (EIN) <b>55-0787351</b>	1 Wages, tips, other comp. <b>2886.19</b>	2 Fed. income tax withheld <b>278.79</b>	
Employee's name, address, and ZIP code <b>TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010</b>		Employee's social security no. [REDACTED]	3 Social security wages <b>2886.19</b>	4 Social security tax withheld <b>178.94</b>	
		7 Social security tips <b>2886.19</b>	5 Medicare wages and tips <b>2886.19</b>	6 Medicare tax withheld <b>41.85</b>	
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If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

Form W-2 Wage and Tax Statement 2006		OMB No. 1545-0008	39-1908647	Department of the Treasury -- Internal Revenue Service	
Control number <b>0020-Y156</b>	Copy 2--To Be Filed With Employee's State, City, or Local Income Tax Return.	Employer identification no. (EIN) <b>55-0787351</b>	1 Wages, tips, other comp. <b>2886.19</b>	2 Fed. income tax withheld <b>278.79</b>	
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# EXHIBIT C

**THE 40/40 CLUB POLICY AND PROCEDURE EMPLOYEE  
UNDERSTANDING**

NAME Brandon Sturman  
DATE 4/6/06

POSITION BARTENDER

I UNDERSTAND THE FOLLOWING POLICY'S,  
THEY HAVE BEEN EXPLAINED. WRITTEN,  
READ AND DISCUSSED AT VARIOUS  
MEETING'S.

1. THERE IS A SIX STEP CREDIT CARD  
PROCEDURE, IT IS POSTED AND IF NOT  
FOLLOWED MAY CAUSE MY PAYMENT OF  
THE FULL AMOUNT OF THE CHECK IN  
QUESTION.
2. THERE IS ZERO TOLERANCE POLICY FOR  
DRUG SALE OR USE BY AN EMPLOYEE OR  
CUSTOMER. ALCOHOL USE BY AN  
EMPLOYEE, SERVING TO MINORS OR  
INTOXICATED PATRON'S. THERE ARE  
PROCEDURES THAT I MUST FOLLOW IF  
ANY OF THE ZERO TOLERANCE INCIDENTS  
OCCUR.
3. I MUST BE FLUENT IN ALL MENU ITEMS.
4. I MUST ATTEND WEEKLY MEETINGS.

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